Supreme Court of the United States

October Term, 1945

In the Matter
of
DEEP ROCK OIL CORPORATION, a corporation,
Debtor.

No. 846.

STANDARD GAS AND ELECTRIC COMPANY, a corporation,
Petitioner,
v.
DEEP ROCK OIL CORPORATION, Debtor, ERNEST O. THOMAS, Trustee, JOHN J. SHEPHERD, NEWTON P. FEVE, ROBERT P. [illegible], H. MASON, ALBERT J. ROBERTSON, and CHARLES [illegible], as a Reorganization Committee, JOHN M. TAYLOR, OSCAR [illegible], and H. RUSSELL HASTINGS, as Independent Protective Committee.

No. 847.

STANDARD GAS AND ELECTRIC COMPANY, a corporation,
Petitioner,
v.
DEEP ROCK OIL CORPORATION, Debtor, ERNEST O. THOMAS, Trustee, JOHN J. SHEPHERD, NEWTON P. FEVE, ROBERT P. [illegible], H. MASON, ALBERT J. ROBERTSON, and CHARLES [illegible], as a Reorganization Committee, JOHN M. TAYLOR, OSCAR [illegible], and H. RUSSELL HASTINGS, as Independent Protective [illegible] Committee.

BRIEF ON BEHALF OF THE INDEPENDENT COMMITTEE FOR THE PROTECTION OF THE HOLDERS OF PREFERRED STOCK, THE REORGANIZATION COMMITTEE, AND H. H. GREER, TRUSTEE, IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

James L. Shepherd,
Travis I. Sharpe,
Marion J. Hatch,
Attorneys for John M. Taylor, et al.

William P. Bonbright,
James F. Oates, Jr.
George W. Bahr,
Valiman Higgins,
Attorneys for the Reorganization Committee.

George S. Ramsey,
Velland Martin,
Garnett Logan,
Attorneys for H. H. Greer, Trustee of Deep Rock Oil Corporation.

Shepherd, Dewey, Stanton & Hohenman,
Of Counsel.

Sidley, McPherson, Austin & Burgess,
Of Counsel.

Ramsey, Martin & Logan,
Of Counsel.

Lawyer Printing Company, Chicago—Phone [illegible]

INDEX

PAGE

I. STATEMENT 1

II. ARGUMENT 5

CONCLUSION 11

CITATIONS

Cases:

Taylor v. Standard Gas and Electric Company, 306 U. S. 307 (1939) 2

Case v. Los Angeles Lumber Products Company, Ltd., 308 U. S. 106 (1939) 7, 9

Northern Pacific Railway Company v. Boyd, 228 U. S. 482 (1913) 7

Consolidated Rock Products Co. v. du Bois, ... U. S. ..... (October Term, 1940, Nos. 400 and 444) 7

Pepper v. Litton, 60 S. Ct. 238, 246; 308 U. S. 295 (1939) 7

In re 620 Church Street Building Corporation, 299 U. S. 24 (1936) 8, 9

In re Utilities Power & Light Corporation, 29 F. Supp. 763, 769 (D. C. N. D. Ill., 1939), app. dis. 7 Cir. C. C. A. on March 9, 1940, without opinion, Causes Nos. 7221, 7222 10

In re National Food Products Corporation, 23 F. Supp. 979 (D. C. Md., 1938) 10

Continental Insurance Co. v. Louisiana Oil Refining Corporation, 89 F. (2d) 333, 338 (C. C. A. 5th, 1937) 10

PAGE

In re Chicago, Great Western Railroad Company, 29 F. Supp. 149 (D. C. N. D. Ill., 1939) 10

Campbell v. Alleghany Corporation, 75 F. (2d) 947 (C. C. A. 4th, 1935), cert. den. 296 U. S. 581 11

Miscellaneous:

Finletter's Bankruptcy Reorganization (1939), p. 417 10

Moore's Bankruptcy Manual (1939), p. 575 11

Gerdes, Corporate Reorganizations, Vol. 2, p. 1726 (1936) 11

53 Harvard Law Review 713 (March, 1940) 11

34 Illinois Law Review 589 (January, 1940) 11

Supreme Court of the United States

OCTOBER TERM, 1940

IN THE MATTER
OF
DEEP ROCK OIL CORPORATION, a corporation,
Debtor.

No. 846.

STANDARD GAS AND ELECTRIC COMPANY, a corporation,
Petitioner,
v.
DEEP ROCK OIL CORPORATION, Debtor, HENRY N. GREIS, Trustee, JOHN J. SHINNERS, NEWTON P. FRYE, ROBERT F. HOLDEN, JOHN H. MASON, ALBERT J. ROBERTSON and CHARLES S. SARGENT, as a Reorganization Committee, JOHN M. TAYLOR, OSCAR A. KENNEDY, and H. RUSSELL HASTINGS, as Independent Preferred Stockholders' Committee.

No. 847.

STANDARD GAS AND ELECTRIC COMPANY, a corporation,
Petitioner,
v.
DEEP ROCK OIL CORPORATION, Debtor, HENRY N. GREIS, Trustee, JOHN J. SHINNERS, NEWTON P. FRYE, ROBERT F. HOLDEN, JOHN H. MASON, ALBERT J. ROBERTSON, and CHARLES S. SARGENT, as a Reorganization Committee, JOHN M. TAYLOR, OSCAR A. KENNEDY, and H. RUSSELL HASTINGS, as Independent Preferred Stockholders' Committee.

BRIEF ON BEHALF OF THE INDEPENDENT COMMITTEE FOR THE PROTECTION OF THE HOLDERS OF PREFERRED STOCK, THE REORGANIZATION COMMITTEE, AND H. N. GREIS, TRUSTEE, IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI.

I.

STATEMENT

Under date of November 12, 1940, this Court denied the petition for writ of certiorari dated September 26, 1940, filed by Standard Gas and Electric Company (hereinafter

referred to as "Standard") to review the unanimous judgment entered by the Circuit Court of Appeals for the Tenth Circuit on June 29, 1940 (113 F. (2d) 266) affirming the order of the District Court of the United States for the Northern District of Oklahoma entered February 29, 1940.

The decree of the District Court entered February 29, 1940, ordered:

> "(1) That the claims of the creditors and noteholders and the interests of the preferred stockholders in the amounts found due by this court, are to be satisfied in full before Standard is entitled to participate in the assets of the Debtor in liquidation, reorganization or any other manner whatsoever.
>
> "(2) That the common stock of the Debtor, and whatever claims Standard Gas and Electric Company may have as a creditor against the Debtor, are without value, since the claims of the creditors and noteholders and the interests of the preferred stockholders substantially exceed the value of the assets of the Debtor.
>
> "(3) Standard Gas and Electric Company is not entitled to participate in the reorganization of the Debtor." (R. p. 160)

The foregoing decree of the District Court was the necessary consequence of the opinion and mandate of this Court in *Taylor* v. *Standard Gas and Electric Company,* 306 U. S. 307 (1939).[1]

In conformity with the order of the District Court entered February 29, 1940, the Reorganization Committee presented a Plan of Reorganization eliminating Standard from participation as a creditor and common stockholder. This Plan, entitled the Second Amended Plan of Reorganization, as modified May 20, 1940, was approved on May 28,

---

[1]See our brief filed in opposition to Standard's petition for certiorari, Supreme Court of the United States, October term 1940, No. 465.

1940 by the District Court under Section 174 of Chapter X of the Bankruptcy Act, as amended, and was finally confirmed by the District Court on July 24, 1940, under Section 179 of said Chapter. Standard's appeals from the orders approving and confirming the Plan were consolidated by the Circuit Court of Appeals, which unanimously affirmed such orders on January 13, 1941. (R. pp. 1687-1696)

As stated by the Circuit Court of Appeals:

> "In its order of February 29, 1940, and again in its order of July 24, 1940, the trial court expressly found that the assets of the debtor were not sufficient in value to satisfy in full the claims of the noteholders and the preferred stockholders. It follows under our holding In re Deep Rock Oil Corporation, 113 F. (2d) 266, Standard is not entitled to participate." (R. p. 1691)

By the instant petition Standard seeks to review the orders of the District Court approving and confirming the Plan entered without objection by any other party, which orders merely implemented and gave effect to the decree of February 29, 1940, in so far as the elimination of Standard is concerned. The pending petition is confessedly an effort to relitigate in this Court the status and right of Standard to participate in the reorganization of the Debtor. (Pet. pp. 2-3)

There has been no substantial change in the value of the assets of the Debtor. As has been the case since the District Court first appraised the Debtor's assets in 1936 (306 U. S. 307, 314), the interests of the holders of Deep Rock notes and preferred stock greatly exceed in the aggregate the value of such assets. In the order of confirmation entered July 24, 1940 (being the second of the two orders here sought to be reviewed), the District Court found that the value of the Debtor's assets

> "is not now in excess of $15,600,000 after the second interim distribution ordered to be paid on May 9,

> 1940;[2] that said assets are not now of sufficient value to satisfy in full the claims and interests respectively, of the holders of the presently outstanding Convertible Gold Notes and Preferred Stock of the Debtor; that all of the claims of Standard, including the claim with reference to the assets of Deep Rock Oil and Refining Company, and the interests of the holders of Common Stock are without value; and that Standard, as a claimant and the said holders of Common Stock, including Standard, are not affected by the Plan." (Rec. p. 1408)

Standard does not challenge the finding of value thus made as of July 24, 1940 in the confirmation order, which order Standard admits to be "final and dispositive." (Pet. p. 2) It is thus conceded that the possible enhancement in value of the assets of Deep Rock and the creation thereby of an equity for Standard, to which the Circuit Court of Appeals referred in the decision reported in 113 F. (2d) 266 (R. pp. 1377-1378) has not been realized.

---

[2]The two interim distributions aggregated $2,400.000.

II.

ARGUMENT

In stating its "reasons for granting certiorari" (Pet. pp. 8-12) Standard reasserts in various forms arguments presented in its petition for certiorari denied by this Court on November 12, 1940, as follows:

> (a) That its claim against Deep Rock, which has been subordinated by this Court in the *Taylor* case, is meritorious, as shown by the record, including the evidence presented to the District Court in January of 1940 prior to the entry of the order of February 29, 1940.
>
> (b) That it is unfair to exclude Standard from participation in the light of the prices paid by the public holders of notes and preferred stock.
>
> (c) That in view of the so-called "speculative resources" of Deep Rock and its "fluctuating" record of earnings, Standard should not be eliminated from participation as required by the February order and as made effective by the orders here sought to be reviewed.

In the briefs filed last October in Cause No. 465, the undersigned and the Securities and Exchange Commission fully met the above arguments, as follows:

> (a) All items of the claim of Standard, including its claims in connection with the Refining Company assets, were before this Court and subordinated by the opinion in the *Taylor* case (R. p. 1271; 306 U. S. 307). The evidence introduced at the hearings in January of 1940, although purporting to contradict the conclusions of this Court in the *Taylor* opinion (R. pp. 1296-1307), did not change the character of Standard's claim or the record originally before this Court. (R. p. 1271)[3]

[3]It is to be noted that Standard's contradictions of this Court's conclusions in the *Taylor* case are repeated in the instant petition (pp. 6, 11).

(b) Standard cannot be heard to contend that its subordinated claims and interests have value on the ground that the securities of certain of the holders of notes and preferred stock may have been purchased at depressed prices less than the full face amount.[4]

(c) All elements of value including the so-called "speculative resources" of Deep Rock and its record of earnings were necessarily considered by the District Court in reaching its conclusion as to the value of the Debtor's assets, which conclusion Standard does not challenge.

We shall not reargue the foregoing questions in this brief, but respectfully refer the Court to our positions in reference thereto as found in the briefs filed in Cause No. 465.

In addition to the contentions summarized above, Standard presents in the instant petition only one question (Pet. p. 7 pars. 1 and 2): since the Debtor is solvent and the plan provides for the prior rights of noteholders and for the participation of preferred stockholders, should the rule of absolute priorities be applied with the result that Standard, as a subordinated creditor and common stockholder, is excluded from participation without its consent. Standard contends that it cannot be eliminated and urges that "relative priorities" only should be maintained, as between it and the preferred stockholders. (Pet. p. 26)

It is our position that the rule of absolute priorities applies to determine the respective rights of the preferred stockholders, Standard (as a creditor subordinated to such

---

[4]That the assignee of a claim is entitled, in the absence of fraud, to assert such claim for the full amount irrespective of the consideration which he may have paid for it, is supported by all of the authorities. See determination by Circuit Court of Appeals and cases there cited, R. pp. 1694-1695; our brief filed in Cause No. 465, pp. 8-9; brief of Securities and Exchange Commission filed in Cause No. 465, pp. 11-13.

rights) and common stockholders, and therefore requires Standard's elimination.[5]

In *Case* v. *Los Angeles Lumber Products Company, Ltd.*, 308 U. S. 106 (1939), this Court held that the statutory requirement that all plans of reorganization must be found to be "fair and equitable" included the fixed principle of *Northern Pacific Railway Company* v. *Boyd*, 228 U. S. 482 (1913), that is, the rule of absolute priorities. Recently, in *Consolidated Rock Products Co.* v. *du Bois*, ... U. S. ..... (October Term, 1940, Nos. 400 and 444), this Court held that this rule "applied to reorganizations of solvent as well as insolvent companies" and that the "rule was not satisfied even though the 'relative priorities' of creditors and stockholders were maintained."

No qualification or limitation is made by the statute in its requirement that all plans must be fair and equitable. If it is not "fair and equitable" to permit participation by stockholders when the rights of creditors are not satisfied in full, it is equally unfair to include common stockholders when the prior rights of preferred stockholders are not satisfied. Where, as here, the value of a debtor's assets has been found to be more than the claims of the creditors but substantially less than the aggregate claims and interests of the creditors and preferred stockholders, no plan can be fair and equitable which provides for participation by any interests subordinate to the preferred stock.

If Standard were permitted to participate in a reorganization plan under such conditions, this Court's decree of subordination would be nullified. If Standard were to re-

---

[5]Surely the rule cannot be relaxed in favor of Standard, whose claim was subordinated to the interests of the holders of preferred stock, as stated by this Court in *Pepper* v. *Litton*, 60 S. Ct. 238, 246; 308 U. S. 295 (1939) because of "the history of spoliation, mismanagement and faithless stewardship of the affairs of the subsidiary by Standard to the detriment of the public investors."

ceive securities for its worthless interest, value would thereby be taken and diverted from the senior classes. This would not be subordination. Subordination means participation after, and only after, prior claims have been satisfied in full.

Standard suggests (Pet. pp. 22, 23) that the Debtor's corporate charter gives to it as a common stockholder a contract right to participate so long as any equity exists for the preferred stock, unless and until actual liquidation is enforced. This argument misconceives the nature of the contract right and the purposes of the reorganization statutes. The statutes provide a modern alternative for liquidation with its consequent sacrifice sale, by permitting continued business operation and retaining going concern values for fair allocation under reorganization plans among all classes shown on the basis of such values to have an interest. Where an appraisal of the value of the debtor's assets as a going concern shows that junior securities of either creditors or stockholders or both are worthless, all "interests" of such classes thereby disappear. (*In re 620 Church Street Building Corporation,* 299 U. S. 24 (1936))

It is urged in the petition (pp. 26, 27) that the application of the rule of absolute priorities as between classes of stockholders discourages investment in common stocks and thereby conflicts with desirable social and economic objectives. Such application, however, no more discourages investment in equities than the application of the rule as between creditors and stockholders. The rule by its uniform application in both situations serves the greater social and economic objective of insuring fairness by the protection in full of the interests of each class of creditors and stockholders in the order of their respective priorities.

Standard finally asserts that as the holder of common stock and as a subordinated creditor it is affected by the

Plan within the meaning of Section 216 of Chapter X of the Bankruptcy Act, as amended, and that therefore the Plan cannot be confirmed without its consent unless the provisions of Section 216(7) and (8) providing methods for the protection of non-assenting affected classes of creditors and stockholders are followed. Section 216(7) and (8) provide that any class of creditors or stockholders affected by a plan and who do not accept it must be provided "adequate protection" for the realization by them of the value of their claims (in the case of creditors) and of their equity, if any (in the case of stockholders), by one of the methods prescribed by the statute.

Section 107 of Chapter X defines persons affected by a plan as follows:

> "Creditors or stockholders or any class thereof shall be deemed to be 'affected' by a plan only if their or its interest shall be materially and adversely affected thereby."

Since Standard's claims and common stock interests have been determined to be valueless, it has no interest to be affected by the Plan.

This Court in *In re 620 Church Street Building Corporation,* 299 U. S. 24 (1936), held that the valueless junior interests there involved were not affected by the plan; that a valuation, of which no complaint was made, accorded such interests adequate protection; and that the finding that there was no equity for them was a finding that they, in fact, held no property of which they could be deprived.[6]

It seems mere sophistry to insist that Standard as a subordinated creditor and common stockholder, where its in-

[6]In a footnote to the opinion in *Case* v. *Los Angeles Lumber Products Company, Ltd.,* 308 U. S. 106, 120 (1939), this Court cited its opinion in the *Church Street* case following the statement "But under § 77B approval of a plan by security holders who have no equity in the enterprise is unnecessary."

terests are valueless, must either consent to a Plan eliminating such interests or that the Plan must provide for the protection of such non-existent interests.

The elimination of worthless classes of either creditors or stockholders is merely incidental to and in aid of the ultimate and principal purposes of the statute. The authorities are uniform in holding that under the reorganization statutes a court of bankruptcy may properly eliminate classes of stockholders having no equity even though the corporation may be solvent and other prior classes of stockholders are allowed participation.

In re Utilities Power & Light Corporation, 29 F. Supp. 763, 769 (D. C. N. D. Ill., 1939), app. dis. 7 Cir. C. C. A. on March 9, 1940, without opinion, Causes Nos. 7221, 7222.[7]

In re National Food Products Corporation, 23 F. Supp. 979 (D. C. Md., 1938).

Continental Insurance Co. v. *Louisiana Oil Refining Corporation,* 89 F. (2d) 333, 338 (C. C. A. 5th, 1937).

In re Chicago, Great Western Railroad Company, 29 F. Supp. 149 (D. C. N. D. Ill., 1939).

Finletter's Bankruptcy Reorganization (1939), p. 417.

---

[7]In the footnote on pages 23-24 of its petition Standard concedes that "the point discussed in the text of this brief" was involved in the appeal in the *Utilities Power and Light* case, but urges that the action of the Circuit Court of Appeals in dismissing the appeal "casts no light on the question discussed in the text." The question however was definitively decided by the District Court (29 F. Supp. 763, 769) and the appeal could not have been dismissed if the Circuit Court of Appeals agreed with the proposition here advanced that a common stockholder must participate in any reorganization "where there is any equity for stockholders of any class" (Pet., p. 23).

Moore's Bankruptcy Manual (1939), p. 575.

Gerdes, Corporate Reorganizations, Vol. 2, p. 1726 (1936).

53 *Harvard Law Review* 713 (March, 1940).

34 *Illinois Law Review* 589 (January, 1940).

There is no authority to the contrary in any decided case. Standard cites (Pet. pp. 10, 24) only one decision in a reorganization case, *Campbell* v. *Alleghany Corporation,* 75 F. (2d) 947 (C. C. A. 4th, 1935), cert. den. 296 U. S. 581. The holding in this case has no possible bearing here. The opinion, however, recognizes that a plan of reorganization does not affect claims which are admittedly worthless on an uncontested appraisal. There is no conflict between the decision of the Fourth Circuit in the *Campbell* case and that of the Circuit Court of Appeals for the Tenth Circuit in the orders here sought to be reviewed.

CONCLUSION

This proceeding has been before the courts since February of 1933. It does not now involve any substantial undetermined questions of law. In accordance with this Court's opinion in the *Taylor* case, Standard's asserted right to participate in the reorganization was adjudicated adversely to it by the District Court in the order entered February 29, 1940, and by the Circuit Court of Appeals for the Tenth Circuit, which affirmed that order on June 29, 1940 (113 F. (2d) 266, cert. den. Cause No. 465 November 12, 1940). The orders of the courts below approving and confirming the Plan of Reorganization which excluded Standard from participation were inevitable under the prior decisions of this Court and raise no new issues of importance.

We respectfully submit that the discretion of this Court should be exercised to deny the petition for writs of cer-

tiorari and thereby at last bring to fruition the long sustained efforts of the parties in interest to achieve a constructive result.

Respectfully submitted,

JASON L. HONIGMAN,
TRAVIS I. MILSTEN,
MILTON J. MILLER,
Attorneys for John M. Taylor, et al.

SEMPLINER, DEWEY, STANTON & HONIGMAN,
Of Counsel.

WILLIAM P. SIDLEY,
JAMES F. OATES, JR.,
GEORGE W. BALL,
VALJEAN BIDDISON,
Attorneys for the Reorganization Committee.

SIDLEY, MCPHERSON, AUSTIN & BURGESS,
Of Counsel.

GEORGE S. RAMSEY,
VILLARD MARTIN,
GARRETT LOGAN,
Attorneys for H. N. Greis, Trustee of Deep Rock Oil Corporation.

RAMSEY, MARTIN & LOGAN,
Of Counsel.

INDEX

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
Argument	5
Conclusion	11
Appendix	12

CITATIONS

Cases:	
Case v. *Los Angeles Lumber Products Co., Ltd.*, 308 U. S. 106	7
Campbell v. *Alleghany Corporation*, 75 F. (2d) 947	11
Chicago Great Western Ry. Co., In re, 29 F. Supp. 149	8, 10
Consolidated Rock Products Co. v. *Du Bois*, Nos. 400 and 444, present Term, decided March 3, 1941	8, 9
Consolidation Coal Co., In re, 11 F. Supp. 594	10
Continental Insurance Co. v. *Louisiana Oil Refining Co.*, 89 F. (2d) 333	8
National Food Products Corp., In re, 23 F. Supp. 979	8, 10
Nebel Co., Inc., Oscar, In re, unreported decision July 11, 1940, No. 7394 (C. C. A. 3d)	10
620 Church Street Bldg. Corp., In re, 299 U. S. 24	7, 8
Taylor v. *Standard Gas & Electric Co.*, 306 U. S. 307	3, 4
Utilities Power & Light Corp., In re, 29 F. Supp. 763, appeal dismissed C. C. A. 7th, March 9, 1940	8, 10
Witherbee Court Corp., In re, 88 F. (2d) 251, certiorari denied, *sub nom. Klee Corp.* v. *Roosevelt*, 301 U. S. 701, rehearing denied, 301 U. S. 715	8
Statute:	
Bankruptcy Act, Act of July 1, 1898, c. 541, 30 Stat. 544, as amended (11 U. S. C. § 1 *et seq.*):	
Sec. 107 (11 U. S. C. § 507)	6, 12
Sec. 174 (11 U. S. C. § 574)	12
Sec. 179 (11 U. S. C. § 579)	5, 12
Sec. 216 (7), (8) (11 U. S. C. § 616)	6, 13, 14
Sec. 221 (2) (11 U. S. C. § 621)	14
Miscellaneous:	
Finletter, *The Law of Bankruptcy Reorganization* (1939) pp. 417–418	8, 10
Gerdes, Corporate Reorganizations (1936), Vol. 2, p. 1740	8, 10

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 846

STANDARD GAS AND ELECTRIC COMPANY, PETITIONER

v.

DEEP ROCK OIL CORPORATION, DEBTOR, HENRY N. GREIS, TRUSTEE, JOHN J. SHINNERS, ET AL.

No. 847

STANDARD GAS AND ELECTRIC COMPANY, PETITIONER

v.

DEEP ROCK OIL CORPORATION, DEBTOR, HENRY N. GREIS, TRUSTEE, JOHN J. SHINNERS, ET AL.

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

The Securities and Exchange Commission is participating in these reorganization proceedings with the approval of the District Judge, pursuant to the provisions of Sections 208 and 276c (2) of Chapter X of the Bankruptcy Act, as amended, c. 575,

52 Stat. 894, 905 (11 U. S. C., §§ 608, 676 (c) (2)) and is an appellee on this appeal (see Rule 73 (b) of the Rules of Civil Procedure).

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Tenth Circuit (R. 1686) is not yet reported. The order of the District Court approving the plan of reorganization (R. 1385) and the order confirming the plan of reorganization (R. 1399) are not reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 13, 1941 (R. 1695). The petition for writs of certiorari was filed on March 14, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. May petitioner's claims or interests ranking junior to preferred stock be excluded from participation in a plan of reorganization where the debtor, although solvent, has assets of a value less than the prior claims and interests of creditors and preferred stockholders?

2. Are the facts and circumstances of this reorganization such as to render inapplicable the rule of absolute priority?

STATUTE INVOLVED

The pertinent provisions of the Bankruptcy Act appear in the Appendix, *infra*, pp. 12–14.

STATEMENT

The present controversy arises in the same reorganization proceeding which was before this Court in *Taylor* v. *Standard Gas & Electric Co.*, 306 U. S. 307 (hereinafter referred to as the *Taylor* case), and on the petition for a writ of certiorari filed by Standard Gas and Electric Company (hereinafter referred to as "Standard") on September 26, 1940, No. 465, present Term, which was denied by this Court on November 12, 1940.[1]

After the decision of this Court in the *Taylor* case that Standard's claims must be subordinated to the interests of the preferred stockholders, the Reorganization Committee filed an amended plan of reorganization. Since the senior claims and interests of the noteholders and preferred stockholders exceeded in amount the value of the debtor's assets,[2] the plan provided for no participation for Standard's subordinated claims. Shortly thereafter Standard filed an "amended" claim (R. 91) which involved no new items (R. 1271). A hearing on that claim and on the plan of reorganization was held on January 29 and 30, 1940, before the District Court (R. 1184).

On February 29, 1940, the District Court found that the value of the assets of the debtor was less

[1] The record in No. 465 has been incorporated as Vols. I and II of the record in these cases.

[2] The valuation upon which this Court and the lower courts have predicated all their opinions is unchallenged by Standard in this proceeding.

than the claims of the debtor's noteholders for principal and interest and the liquidation preference of the 50,000 shares of the debtor's preferred stock. Since, under the decision of this Court in the *Taylor* case, Standard's claims of whatever nature were required to be subordinated to the senior claims of the noteholders and the interests of the preferred stockholders, the court found that Standard's claims were of no value and accordingly that Standard was not entitled to participate in the reorganization (R. 148, 159).[3] The Circuit Court of Appeals affirmed the decision of the District Court,[4] and Standard's petition to this Court for a writ of certiorari was denied.[5]

Having disposed of Standard's claim, the District Court, on May 28, 1940, approved the Reorganization Committee's amended plan of reorganization and confirmed it on July 24, 1940. Standard appealed from the orders of approval and confirmation and the appeals were consolidated. The Circuit Court of Appeals affirmed (R. 1695–1696), stating:

> In its order of February 29, 1940, and again in its order of July 24, 1940, the trial court expressly found that the assets of the

---

[3] Standard owns a small amount of preferred stock which was not excluded. Standard argued below, but does not argue here, that the plan is unfair to it as a preferred stockholder.

[4] 113 F. (2d) 266 (R. 1372).

[5] No. 465, this Term, decided November 12, 1940.

debtor were not sufficient in value to satisfy in full the claims of the noteholders and the preferred stockholders. It follows under our holding In re Deep Rock Oil Corporation, 113 F. (2d) 266, Standard is not entitled to participate (R. 1690–1691).

ARGUMENT

The present petition is in effect an attempt to secure review by this Court of questions which this Court refused to review when it denied Standard's earlier petition for certiorari, No. 465, present Term. The grounds advanced for issuance of the writs in the present petition are restatements of questions presented or necessarily involved in the earlier petition. Consequently, we refer to our brief in opposition in No. 465 for a statement of the Commission's position on the propriety of the exclusion of Standard from participation in the reorganization plan. There are certain arguments now made, however, which are cast in somewhat different form than in the earlier petition, or which express views which were only implicit in that petition. These arguments require brief additional comment.

1. Standard contends that the prerequisites for confirmation of a plan provided by Section 179 of the Bankruptcy Act have not been satisfied because under that section either Standard's consent to the plan must be obtained or some provision must be made for the protection of its interests. Section 179 provides that the plan must be accepted by or

on behalf of creditors holding two-thirds in amount of the claims filed and allowed for each class, and, if the debtor has not been found to be insolvent, by or on behalf of stockholders holding a majority of the stock of each class, exclusive of creditors and stockholders who are not affected by the plan or for whom payment or protection has been provided as prescribed in paragraphs (7) and (8) of Section 216. Section 216 (7) requires that the plan "shall provide for any class of creditors which is affected by and does not accept the plan by the two-thirds majority in amount required under this chapter, adequate protection for the realization by them of the value of their claims against the property dealt with by the plan and affected by such claims * * *." Section 216 (8) requires that the plan "shall provide for any class of stockholders which is affected by the plan and does not accept the plan by the majority of the stock required under this chapter, adequate protection for the realization by them of the value of their equity, *if any,* in the property of the debtor dealt with by the plan * * *." [Italics added.] Section 107 provides that "Creditors or stockholders or any class thereof shall be deemed to be 'affected' by a plan only if their or its interest shall be materially and adversely affected thereby."

Read together, these sections require that where a class of security holders has an interest to be protected, acceptances by the requisite percentage

of the class must be obtained; or in the absence of such acceptances, adequate protection must be provided for its claims or interests in some other manner. But where the class has no remaining interest to be protected, that class is not affected by the plan within the meaning of these provisions and, accordingly, no acceptance by that class is required and no other protection need be afforded to it. In *In re 620 Church Street Bldg. Corp.*, 299 U. S. 24, 27, this Court so interpreted a similar provision in Section 77B upon objection of excluded junior creditors and stockholders, stating:

> Petitioners insist that their consent to the plan of reorganization was necessary or that their claims should have been accorded "adequate protection." But the adequate protection to which the statute refers is "for the realization of the value of the interests, claims or liens" affected. Here the controlling finding is not only that there was no equity in the property above the first mortgage but that petitioners' claims were appraised by the court as having "no value." There was no value to be protected. This finding embraces whatever interests petitioners may have as junior lienors under the Illinois law and, in the same aspect, the constitutional argument is unavailing as petitioners have not shown injury.[6]

[6] In *Case* v. *Los Angeles Lumber Products Co., Ltd.*, 308 U. S. 106 (footnote, p. 120), the Court stated, "But under

Standard attempts to distinguish that decision on the ground that the debtor in that case was insolvent (Pet. 9, 21). But the criterion for protection of non-assenting classes of security holders is the same whether there be solvency or insolvency, namely, whether the class has an interest in the assets of the debtor. The lower courts have uniformly held that the rationale of this Court in *In re 620 Church Street Bldg. Corp., supra,* is applicable with respect to excluded classes of stockholders in the reorganization of solvent debtors.[7]

2. Standard also contends that it is unfair and illegal to exclude its claim and stock from participation under the plan because the debtor is solvent. An attempt is made to distinguish the recent decision of this Court in *Consolidated Rock Products Co.* v. *DuBois,* Nos. 400 and 444, present Term, decided March 3, 1941, on the ground that the

---

§ 77B approval of a plan by security holders who have no equity in the enterprise is unnecessary." See also *In re Witherbee Court Corp.*, 88 F. (2d) 251 (C. C. A. 2d), certiorari denied, *sub nom. Klee Corp.* v. *Roosevelt*, 301 U. S. 701, rehearing denied, 301 U. S. 715.

[7] *In re National Food Products Corp.*, 23 F. Supp. 979 (D. Md.); *In re Utilities Power & Light Corp.*, 29 F. Supp. 763 (N. D. Ill.), appeal dismissed, C. C. A. 7th, March 9, 1940; *cf. Continental Insurance Co.* v. *Louisiana Oil Refining Co.*, 89 F. (2d) 333, 338 (C. C. A. 5th). For a similar holding with respect to Section 77, which has substantially the same provisions, see *In re Chicago Great Western Ry. Co.*, 29 F. Supp. 149, 157 (N. D. Ill.). See also *Gerdes, Corporate Reorganizations* (1936), Vol. 2, p. 1740; Finletter, *The Law of Bankruptcy Reorganization* (1939), pp. 417–418.

issue there was between creditors and stockholders. But in the *Consolidated Rock Products* case, the Court indicated that the absolute priority rule was applicable as between classes of stockholders, stating (footnote 27):

> It should, however, be noted as respects the warrants issued to the old common stockholders that they admittedly have no equity in the enterprise. Accordingly, it should have been shown that there was a necessity of seeking new money from them and that the participation accorded them was not more than reasonably equivalent to their contribution.

Moreover, the distinction is based on a misconception of the principle involved. Participation of a class of security holders under a fair plan is always dependent on the existence of an equity for that class. Any other test would result in the taking of the property of a senior class for the benefit of a junior class. That principle is as applicable to classes of stock of different rank as it is to other types of securities.

Standard argues that the contract between the preferred and common stockholders so differs from the contract between creditors and stockholders as to require the application of different standards of fairness. It contends that the prior rights of the preferred stockholders to payment arise only on liquidation, that a reorganization is not a liquidation, and hence that the preferred stockholders are not entitled to a recognition of

their liquidating preference in a reorganization, to the exclusion of the common stock. But this misconceives the principles underlying the reorganization process. Under the reorganization technique of the Bankruptcy Act, the security holders receive, as the proceeds of their claims, interests in the reorganized enterprise in lieu of the cash or other proceeds which would result from a forced sale. But this affords no ground for disregarding the priorities of the respective classes of creditors and stockholders, which determine the order in which these interests shall share in the going-concern values. With respect to priorities, the principle underlying the distribution of the proceeds is the same whether the distribution is of the proceeds of liquidation or of the proceeds of reorganization.

The liquidation preferences of preferred stockholders have been uniformly adopted by the lower courts as the measure of priority in a reorganization, and securities junior thereto with no remaining equity have been excluded from participation.[8] Under the rule of these cases, since the assets of the debtor here are admittedly insufficient to accord the preferred stockholders fully compensatory

[8] *In re Utilities Power & Light Corp.*, *supra*; *In re Oscar Nebel Co., Inc.*, unreported decision July 11, 1940, No. 7394 (C. C. A. 3d); *In re National Food Products Corp.*, *supra*; *In re Consolidation Coal Co.*, 11 F. Supp. 594 (D. Md.); *In re Chicago Great Western Ry. Co.*, *supra*. See also *Gerdes, Corporate Reorganizations* (1936), *supra*; Finletter, *The Law of Bankruptcy Reorganization* (1939), *supra*.

treatment under the plan of reorganization, Standard's subordinate claims and interests are entitled to no participation.

Campbell v. *Alleghany Corporation,* 75 F. (2d) 947 (C. C. A. 4th), cited by Standard as being in conflict with the decision below, is obviously not in point. The court there, declaring Section 77B to be constitutional insofar as it affects the rights of stockholders, pointed out that when the corporation is solvent the plan "must be accepted by the holders of a majority of the stock *affected.*" [Italics added.] It does not appear that in the *Campbell* case the corporation had more than one class of stock, so the point here involved was clearly not there before the court.

CONCLUSION

The petition for writs of certiorari should be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.
RICHARD H. DEMUTH,
Special Assistant to the Attorney General.
CHESTER T. LANE,
General Counsel,
BERNARD D. CAHN,
HOMER KRIPKE,
Attorneys,
Securities and Exchange Commission.

APRIL 1941.